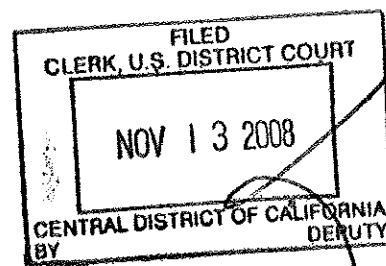
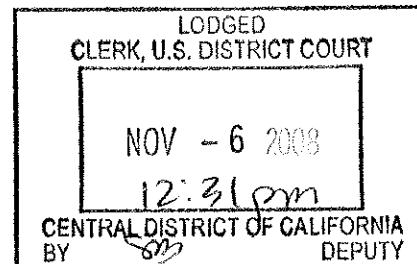


(SPACE BELOW FOR FILING STAMP ONLY)

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10  
 11 Attorneys for Plaintiff, RAY SAHELIAN



13                   **IN THE UNITED STATES DISTRICT COURT**  
 14                   **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 15                   **WESTERN DIVISION**

16  
 17                   RAY SAHELIAN, an individual,

18                   Plaintiff,

19                   vs.

20                   OREXIS, LLC, a foreign limited  
 liability company; URBAN  
 21 NUTRITION, LLC, a foreign limited  
 liability company; EXCELL NOW,  
 22 LLC, a foreign limited liability  
 company; LONGEVITY, LLC, a  
 limited liability company; ATLANTIC  
 23 COAST MEDIA GROUP, LLC, a  
 limited liability company; ANDREW  
 24 SIRWILO, an individual; and  
 THOMAS SHIPLEY, an individual,

25  
 26                   Defendants.

27 Civil Action No. CV08-03561 RGK  
 (CTx)

28 AMENDED COMPLAINT FOR  
 TRADEMARK INFRINGEMENT,  
 UNFAIR COMPETITION,  
 DEFAMATION, FALSE  
 ADVERTISING, DAMAGES AND  
 REQUEST FOR INJUNCTIVE RELIEF

1 Plaintiff Ray Sahelian, M.D., ("Plaintiff") hereby alleges the following for his  
 2 complaint against Orexis, Urban Nutrition, Excell Now, Longevity, Atlantic Coast Media  
 3 Group, Andrew Sirwilo, and Thomas Shipley ("Defendants").

4 **Jurisdiction and Venue**

5 1. This action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, and  
 6 California Law. The Court has subject matter jurisdiction over trademark claims and  
 7 related state claims pursuant to 28 U.S.C. § 1331, 1338, and 1367.

8 2. Jurisdiction is based on Federal Question; 28 U.S.C. §1331.

9 3. This Court has personal jurisdiction over Defendants in that Defendants are  
 10 doing continuous and systematic business in the State of California and in this judicial  
 11 District. Defendants derive substantial revenue from interstate commerce committing  
 12 infringing acts and causing injury to Plaintiff in the State of California. Defendants should  
 13 reasonably expect their infringing conduct to have consequences in the State of California.  
 14 At all relevant times Defendants have transacted business within the State of California and  
 15 contracted to supply goods or services in the State of California in connection with the  
 16 matters giving rise to this suit.

17 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 (b)  
 18 and (c) as Defendants' infringing conduct have injured Plaintiff within this judicial district,  
 19 and because confusion is likely to occur in this district as a result of Defendants' unlawful  
 20 acts. The Western Division, is the appropriate and convenient venue for this suit.

21 **Nature of the Case**

22 5. This is a civil action for damages and equitable relief, including permanent  
 23 injunctive relief, against Defendants for acts of trademark infringement, unfair competition,  
 24 false advertising, and defamation in violation of federal and state laws. Defendants have  
 25 engaged in conduct amounting to a civil conspiracy designed to increase their financial  
 26 profits and harm plaintiff. Civil Conspiracy is defined as a group of two or more persons  
 27 agreeing to a common plan or design to commit a tortious act. *Idema v. Dreamworks, Inc.*,  
 28 162 F.Supp.2d 1129 (C.D.Cal. 09/10/2001). Defendants have misappropriated Plaintiff's

1 name and reputation for purposes of their commercial gain. Additionally, Defendants'  
2 directly and secondarily infringe on the trademark owned by Plaintiff, which is the subject  
3 of a valid Certificate of Trademark Registration from the United States Patent and  
4 Trademark Office. The infringement of Plaintiff's trademark is based on Defendants' use  
5 of Plaintiff's trademark and name as keywords and metatags in online advertising.  
6 Defendants bolster their position by using untrue and misleading advertising regarding  
7 their own products. Defendants further harm Plaintiff's business reputation by publishing  
8 false statements regarding Plaintiff's education and products on their websites.

## Parties

0 A. Plaintiff Ray Sahelian, M.D.

11       6. Plaintiff Ray Sahelian, M.D., (hereinafter also "Plaintiff") has his principal  
12 places of business in Los Angeles, California. Plaintiff is a licensed physician, certified by  
13 the American Board of Family Medicine. Plaintiff publishes an online newsletter titled  
14 "Supplement Research Update." He also provides consulting services to nutritional  
15 companies and maintains the popular website [www.raysahelian.com](http://www.raysahelian.com).

16        7. Plaintiff has a valid, protected trademark interest in Passion Rx®.  
17 Plaintiff's registration of the mark on the Principal Register in the United States Patent and  
18 Trademark Office constitutes prima facie evidence of the validity of the registered mark  
19 and of Plaintiff's exclusive right to use the mark on goods and services specified in the  
20 registration. Plaintiff has priority of use. Plaintiff acquired ownership of said trademark,  
21 invented the mark first, registered it first, and Plaintiff was the first to permit the use of the  
22 mark in the sale of goods or services.

23       8. Plaintiff has authored a number of books on nutritional supplements. They  
24 have been translated into Japanese, Korean, Italian, German, Russian, and Chinese. A  
25 listing of these books follows:

	<b>Title</b>	<b>Publisher</b>
26	Natural Sex Boosters	Square One publishers, 2004
28	Mind Boosters	St. Martin's Press, 2000

1	The Stevia Cookbook	Avery, 1999
2	The Common Cold Cure	Avery, 1999
3	5-HTP Nature's Serotonin Solution	Avery, 1998
4	Saw Palmetto: Nature's Prostate Healer	Kensington books, 1998
5	Kava: The Miracle Anti-Anxiety Herb	St.Martin's Press, 1998
6	Creatine Nature's Muscle Builder	Avery, 1997
7	Pregnenolone	Avery, 1997
8	Glucosamine	Longevity Research, 1997
9	DHEA, A Practical Guide	Avery, 1996
10	Melatonin: Nature's Sleeping Pill	Avery, 1995
11		

12       9.       Plaintiff also formulates health supplements. Among them is the  
 13 formulation trademarked: Passion Rx®.

14 **B. Defendants Orexis, Urban Nutrition, Excell Now, Longevity, Atlantic Coast  
 15 Media Group, Andrew Sirwilo, and Thomas Shipley**

16       10.      Defendants Orexis, Urban Nutrition, and Excell Now, are foreign limited  
 17 liability companies. Defendants Longevity and Atlantic Coast Media Group are limited  
 18 liability companies. Defendants Andrew Sirwilo and Thomas Shipley are general partners  
 19 in each of the above-referenced companies. It is Plaintiff's contention, upon information  
 20 and belief, that Orexis, Urban Nutrition, Excell Now, Longevity, and Atlantic Coast Media  
 21 Group operate a number of cross-linked websites and services, the most prominent of  
 22 which are [www.menschoice.com](http://www.menschoice.com), [www.mentested.com](http://www.mentested.com), and [www.orexis.com](http://www.orexis.com). It is  
 23 Plaintiff's contention, upon information and belief, that Orexis, Urban Nutrition, Excell  
 24 Now, Longevity, and Atlantic Coast Media Group have their principal place(s) of business  
 25 in the State of New York, New Jersey, and Virginia.

26       11.      It is Plaintiff's contention, upon information and belief, that Defendants  
 27 operate a network of interlinked, so called "informational," webpages that seemingly  
 28 provide unbiased commentary and analysis of health related products in order to direct

1 traffic to their websites. The underlying purpose of these "informational pages" is not to  
 2 disseminate information, but instead to direct traffic towards their own sites. Moreover,  
 3 some of Defendants' "informational pages" disparage competitors' product(s) or the  
 4 reputations of persons associated with said product(s).

**5 The Unauthorized Use of Plaintiff's Trademark and Name in Metatags and Keyword**

**6 Advertising for Commercial Gain.**

7 12. Plaintiff seeks damages and injunctive relief for Defendants' use of  
 8 Plaintiff's personal name, in metatags and keyword advertising, for the purpose of  
 9 diverting internet users to the Defendants' webpages. Metatags are HTML code intended  
 10 to describe the contents of the website. Description metatags are intended to describe the  
 11 website. Keyword metatags contain keywords relating to the contents of the website.  
 12 Search engines such as Google or Yahoo look for keywords in places such as domain  
 13 names, actual text on the webpage, and metatags. The more often a term appears in the  
 14 metatags and in the text of the webpage, the more likely it is that the webpage will be "hit"  
 15 in a search for that keyword and the higher on the search results list of "hits" the webpage  
 16 will appear.

17 13. In addition to seeking damages for Defendants' unauthorized use of  
 18 Plaintiff's personal name, Plaintiff also seeks damages and injunctive relief for  
 19 Defendants' use of Plaintiff's trademark, Passion Rx®, in metatags and keyword  
 20 advertising, for the purpose of diverting internet users to the Defendants' webpages and  
 21 thus to Defendants' products.

22 14. Defendants are able to divert online users to their webpages by using such  
 23 metatags and keyword advertising. For instance, a web surfer using Yahoo as his search  
 24 engine to search for Plaintiff's name, "Ray Sahelian," receives a webpage containing links  
 25 to Defendant's webpages. Step I: Plaintiff's name "Ray Sahelian" is keyed into a Yahoo  
 26 search field. [EXHIBIT A is a true and correct copy of a Yahoo search results page for  
 27 "Ray Sahelian," as of 05/22/2008]. When this keyword is entered, the search engine  
 28 processes it through a self-created index of websites to generate a list relating to the entered

1 keyword. Each search engine uses its own algorithm to arrange indexed materials in  
 2 sequence, so the list of websites that any particular set of keywords will bring up may differ  
 3 depending on the search engine used. The search yields not only links related to the  
 4 Plaintiff, but also other links such as Defendants' advertised "informational page,"  
 5 www.themenschoice.com. Step II: The user can then click on the link to Defendants'  
 6 "informational page," www.themenschoice.com. [EXHIBIT B is a true and correct copy of  
 7 the www.themenschoice.com webpage, as of 01/14/2008]. Step III: Upon reading the  
 8 purported unbiased analysis of health related issues and/or products on said "informational  
 9 page," www.themenschoice.com, the user is then invited to click on the "Reader's Poll  
 10 Choice," which promotes the Defendants' Orexis product. [EXHIBIT C is a true and  
 11 correct copy of themenschoice.com's purported unbiased analysis of Defendants' Orexis  
 12 product, as of 01/14/2008]. Step IV: This page invites the user to visit the product's  
 13 "Official Orexis Website." [EXHIBIT D is a true and correct copy of the "Official Orexis  
 14 Website," as of 05/22/2008]. Step V: Finally, this page invites the user to place an order.  
 15 [EXHIBIT E is a true and correct copy of the Orexis order webpage, as of 05/22/2008].

16       15.     Similarly, a web surfer using Google as his search engine to search for  
 17 Plaintiff's Passion Rx® trademark receives a webpage containing links to Defendants'  
 18 webpages. Step I: Plaintiff's mark "Passion Rx" is keyed into a Google search field.  
 19 [EXHIBIT F is a true and correct copy of a Google search results page for "Passion Rx," as  
 20 of 05/22/2008]. The top result is a link to www.themenschoice.com. Additionally, when  
 21 the term "Passion Rx®" is keyed into a Google search field, links to Defendants' other  
 22 webpages are produced. [EXHIBIT G is a true and correct copy of a Google search results  
 23 page for "Passion Rx®"]. This search yields, not only links related to the Plaintiff, but also  
 24 other links such as Defendants' advertised "informational page," www.mentested.com.  
 25 The www.mentested.com website purports to offer unbiased analysis of health related  
 26 products such as Plaintiff's Passion Rx product and Defendants' Orexis Product.  
 27 [EXHIBIT H is a true and correct copy of the www.mentested.com webpage, as of  
 28 05/19/2008]. Step II: The user is invited to read purported unbiased analysis of Plaintiff's

1 Passion Rx product. [EXHIBIT I is a true and correct copy of the Passion Rx webpage on  
 2 www.mentested.com, as of 01/14/2008]. Step III: Upon reading the purported unbiased  
 3 analysis of health related issues pertaining to Plaintiff's Passion Rx on said "informational  
 4 page," www.mentested.com, the user is then invited to click on the "Customer Testimonial  
 5 Award," which promotes the Defendants' Orexis product. [EXHIBIT J is a true and  
 6 correct copy of mentested.com's purported unbiased analysis of Defendants' Orexis  
 7 product, as of 01/14/2008]. Step IV: This page invites the user to visit the product's  
 8 "Official Orexis Website." [EXHIBIT K is a true and correct copy of the "Official Orexis  
 9 Website," as of 05/22/2008]. Step V: Finally, this page invites the user to place an order.  
 10 [EXHIBIT L is a true and correct copy of the Orexis order webpage, as of 05/22/2008].

11       16. To accomplish this trickery, Defendants have, and continue, to purchase  
 12 advertising on Google, Yahoo, and other search engines. Plaintiff's name, "Ray Sahelian,  
 13 M.D.," and the "Passion Rx" trademark are used as metatags and keywords in the  
 14 purchased advertising. By doing so, Defendants actively create an initial interest confusion  
 15 amongst the consuming public.

16       17. Initial interest confusion impermissibly capitalizes on the goodwill  
 17 associated with a mark by creating initial interest in a competitor's product. The internet  
 18 searches, such as those illustrated, yield advertisements which appear immediately after the  
 19 user types in Plaintiff's name "Ray Sahelian M.D., or his mark, "PassionRx"®. The user  
 20 then becomes confused regarding the sponsorship of the advertisements. Because of the  
 21 user's confusion, the user may click to a link believing that it will connect to Plaintiff's  
 22 website, www.raysahelian.com. Even if he immediately realizes, upon accessing the  
 23 competitor's website, that he has reached a website wholly unrelated to Plaintiff's, the  
 24 damage has been done: Defendants have gained a customer by appropriating the goodwill  
 25 that Plaintiff has developed in his name and his mark.

26           **The Publication of Offending Statements on Defendants' Websites Pertaining to**  
 27           **Plaintiff's Education, Business, Products, and Profession**

28       18. Defendants publically question the legitimacy of Plaintiff's educational

1 degrees and professional licenses, and conclude that he is not qualified to provide medical  
2 advice and guidance. These false and unprivileged statements expose Plaintiff to ridicule  
3 and disgrace, and have a tendency to injure Plaintiff's occupation in violation of California  
4 Civil Code Section 45.

5 19. Defendants' webpages contain the following harmful language:

6 "... it does not appear that Sahelian has received much external  
7 recognition that supports his books or supplements. However, we  
8 will still take a closer look at his educational background to  
determine how qualified Sahelian may be in "helping" others with  
health related issues.

### 9 **Qualifications**

10 Sahelian has a bachelor's of science degree in nutrition from Drexel  
11 University and received doctoral training from Thomas Jefferson  
12 Medical School. Both of these schools are located in Philadelphia.  
13 Sahelian is also certified by the American Board of Family  
14 Medicine. This all sounds fine on the surface, but when you dig  
15 little deeper, it is understandable to not be all too impressed with  
16 Sahelian's educational "training." For example in plain terms, to us,  
a bachelor's of science degree in nutrition is the equivalent of an old  
fashioned "lunchroom lady" and would hardly qualify to instruct  
others on their specific dietary needs. Be advised, doctoral training  
is not an equivalent to an actual medical degree. We also want to  
note, Thomas Jefferson Medical School has been cited as a scam by  
ripoffreports.com."

17 20. Defendants also publish false statements that intentionally disparage the  
18 quality of Plaintiff's products and literature, and induce others not to deal with the  
19 Plaintiff, which causes the Plaintiff actual pecuniary damage.

20 21. Defendants' webpages contain the following harmful language pertaining to  
Plaintiff's formulation - "Passion Rx":

22 "Passion RX is, as the name might suggest, is a male sexuality  
23 formula, which was developed by Ray Sahelian, a self-made  
24 "expert" on holistic supplements. He is the author is Natural Sex  
Boosters, which is a rather redundant and ineffectual book, which  
25 does not really bring anything new to this market. Regardless, he  
has developed many herbal-based formulas in the past, all dealing  
26 with different issues such as joint formulas, eyesight enhances and  
prostate formulas, as well as other products.

27 Because of his reputation, he has developed quite a following;  
however, this kind of fad popularity does not necessarily translate  
28 into actual results. Passion RX is a male sexual enhancement

1 product, which Sahelian claims, "gives me special feelings,  
2 sensation, and stamina." However, the real question we have to  
3 answer is - will this product give others the same feelings? Are  
4 these claims fact or fiction? In order to answer this question we will  
dismantle this formula to see what it can actually bring to the table  
in terms of real results that other men can really feel."

5 22. Each of these pages posted by Defendants culminates with an advertisement  
6 for a product, sold by Urban Nutrition.

7 **Defendants Use of Untrue and Misleading Advertising to Sell Their Products**

8 23. California Business & Professions Code §17500 prohibits untrue or  
9 misleading advertising that is known, or which reasonably should be known, to be untrue  
10 or misleading.

11 24. Defendants' websites contain weekly misleading "Reader's Poll Choice"  
12 surveys, and "Customer Testimonial Award" surveys, which permanently promote their  
13 Orexis Product over all others. One of the misleading surveys reads as follows:

14 **"Our Reader's Poll Choice:**

15 Week of: ...

16 **Orexis®** - This exciting product has more testimonials than we have  
17 ever seen from real and enthusiastic customers. Their customers say  
18 enough to sell the product alone. Orexis® is the only non-  
prescription male sexual enhancement product we have reviewed;  
19 that effectively provides both immediate and long term guaranteed  
20 results. Orexis® works in just 45 minutes after consumption. The  
long-term benefits provide a permanent increase in erection size,  
21 orgasm control and stamina. What separates Orexis® from other  
22 products, is that it uses a patented delivery technology so that the  
proprietary manufacturing process extracts the natural ingredients 15  
times their normal strength. Now natural ingredients can be as  
strong as prescriptions with no negative side effects.  
23 Click [HERE](#) to Learn More."

24 **The Individual Principles of Defendant Companies Have Personal Liability For The**  
**Torts Committed Under the Lanham Act**

25 25. Defendants Andrew Sirwilo and Thomas Shipley should be held personally  
26 liable for the actions of their companies as they are general partners in the Defendant  
27 companies and it is plaintiff's contention, upon information and belief, that they authorized  
28

1 or directed the creation of the civil conspiracy described above. Company principles,  
2 directors, and officers are “personally liable for all torts which he authorizes or directs or in  
3 which he participates, notwithstanding that he acted as an agent of the corporation and not  
4 on his own behalf.” *Transgo, Inc. v. AJAC Transmission Parts Corp.*, 768 F.2d 1001, 1021  
5 (9<sup>th</sup> Cir. 1985), cert. denied, 474 U.S. 1059 (1986). Officers and directors, cannot “hide  
6 behind the corporation where they are actual participants in the tort.” *Donsco, Inc. v.*  
7 *Casper Corp.*, 587 F.2d 602 (3d Cir. 1978).

8

9

### **CLAIMS FOR RELIEF**

10       26. All of the above facts create a civil conspiracy constituting well recognized  
11 separate causes of action under Federal and California law as set forth hereinafter:

#### **COUNT I**

##### **Federal Trademark Infringement, 15 U.S.C. §1114**

14       27. All of those allegations set forth hereinabove in paragraphs 1 through 26 are  
15 incorporated herein by reference as if fully set forth.

16       28. The foregoing acts of Defendants constitute unlawful infringement of  
17 Plaintiff's registered Passion Rx® mark in violation of the Lanham Act, 15 U.S.C. § 1114.

18       29. By reason of the foregoing acts of Defendants, Plaintiff has sustained, and  
19 in the absence of an injunction, will continue to sustain, injury and damages in an amount  
20 to be proven at trial.

21       30. Defendants were placed on notice and given an opportunity to cease  
22 infringement. They did not cease. As such, infringement is willful and deliberate, and  
23 sufficient to justify an award of attorneys' fees.

#### **COUNT II**

##### **False Designation of Origin and False Endorsement in Violation of Langham Act, 15 U.S.C. §1125(a)**

27       31. Plaintiff repeats and realleges the allegations in paragraphs 1 through 30,  
28 inclusive, at though set forth fully herein

1       32. Defendants' use, and continuing use, in interstate commerce of the Passion  
2 Rx® mark in connection with Defendants' webpages and products constitutes a violation  
3 of 15 U.S.C. §1125(a) in that it creates a false designation of origin as to the goods  
4 advertised, distributed, offered for sale and sold by Defendants, which is likely to confuse,  
5 mislead, or deceive the consuming public and trade by creating the false impression that  
6 Defendant's webpages and products advertised, distributed, offered for sale and sold by  
7 defendants have been manufactured, approved, sponsored, endorsed or guaranteed by, or  
8 are in some way affiliated, connected or associated with, Plaintiff.

9           33. Defendants' use, and continuing use, in interstate commerce of the Passion  
10 Rx® mark in connection with Defendants' webpages and products also constitutes a false  
11 or misleading description or representation in interstate commerce, in violation of 15  
12 U.S.C. §1125(a).

13       34. As a direct and proximate result of the conduct of Defendants, Plaintiff is  
14 entitled to damages pursuant to 15 U.S.C. §1117(a) of: (i) Defendants' profits related to  
15 Defendants' webpages and products; (ii) any damages sustained by Plaintiff as a result of  
16 Defendants' conduct, the precise amount of which shall be established by Plaintiff at trial;  
17 and (iii) the costs of the action herein.

18           35. Plaintiff is informed and believes, and bases thereon alleges, that  
19 Defendants have committed the acts alleged above with the wilful intent to trade on  
20 Plaintiff's good will and reputation in the context of a product closely associated with  
21 Plaintiff's core business and career. As such, this case is exceptional under 15 U.S.C.  
22 §1117(a), entitling Plaintiff to recovery of his attorney fees and treble damages.

23       36. Defendants' acts will continue and will cause irreparable injury to Plaintiff  
24 unless enjoined by this Court.

### COUNT III

## **Federal Trademark Dilution, 15 U.S.C. §1125(c)**

37. Plaintiff repeats and alleges each and every allegation of paragraphs 1  
through 36 as if fully set forth herein.

1           38.     The foregoing acts of Defendants – including but not limited to Defendants’  
2 involvement in selling inferior products claimed to impact sexual activity – are likely to  
3 tarnish and injure Plaintiff’s reputation, impair the effectiveness of the Passion Rx® mark,  
4 and dilute the distinctive quality of those marks. The foregoing acts of Defendants  
5 constitute an unlawful and intentional dilution under the Federal Anti-Dilution Act, 15  
6 U.S.C. §1125(c).

7       39. Defendants' acts will continue and will cause irreparable injury to Plaintiff  
8 unless enjoined by this Court.

9           40. Plaintiff is informed and believes, and bases thereon alleges, that  
10 Defendants have committed the acts alleged above with the wilful intent to trade on  
11 Plaintiff's reputation and to cause dilution of Plaintiff's registered mark.

12       41. As a direct and proximate result of the above-described acts by Defendants,  
13 Plaintiff has suffered damages in an amount to be proven at trial.

**COUNT IV**

### Common Law Trademark infringement

16       42. Plaintiff repeats and alleges each and every allegation of paragraphs 1  
17 through 41 as if fully set forth herein.

18       43. Plaintiff owns common law trademark rights in the Passion Rx® mark and  
19 in his name in California.

20       44. Plaintiff has invested substantial time and money in developing, advertising,  
21 and promoting his Passion Rx® mark and his name in the worldwide nutritional  
22 supplement industry.

23        45. Defendants are infringing Plaintiff's Passion Rx® mark. The use of his  
24 name and the Passion Rx® mark in Defendants webpages' metatags is likely to cause  
25 confusion, or to cause mistake, or to cause deception as to the nature, characteristics,  
26 qualities, affiliation, connection, or association of Defendants' products and services with  
27 Plaintiff's Passion Rx® products.

28 46. Defendants' acts will continue and will cause irreparable injury to Plaintiff

unless enjoined by this Court.

47. As a direct and proximate result of the above-described infringing acts by Defendants, Plaintiff has suffered damages in an amount to be proven at trial.

**COUNT V**

## **Unfair Competition Under California Business and Professions Code §17200**

48. All of those allegations set forth hereinabove in paragraphs 1 through 47 are incorporated herein by reference as if fully set forth.

8           49. The actions of Defendants, as set forth hereinabove in the promoting,  
9 advertising, distributing, and selling of its products, amount to unlawful, unfair and  
10 fraudulent business acts and practices that violate the California Business and Professions  
11 Code §17200 *et seq.*, which provides in relevant part: “unfair competition shall mean and  
12 include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive,  
13 untrue or misleading advertising.”

14       50. As the direct and proximate result of Defendants' unfair and deceptive  
15 practices, Plaintiff has suffered injuries entitling him to recover damages as may be  
16 determined by the jury.

17       51. Defendants' acts will continue and will cause irreparable injury to Plaintiff  
18 unless enjoined by this Court.

## COUNT VI

## **Common Law Unfair Competition**

21        52. All of those allegations set forth hereinabove in paragraphs 1 through 51 are  
22 incorporated herein by reference as if fully set forth.

23       53. Defendants' acts as set forth herein, including Defendants' unauthorized use  
24 of the Passion Rx® mark and Plaintiff's name, are likely to cause confusion, or to cause  
25 mistake, or to cause deception as to the nature, characteristics, qualities, affiliation,  
26 connection, or association of Defendants' products and services with Plaintiff's products.  
27 Such conduct undermines the ability of Plaintiff's mark to identify its products.

28 54. As described above, Defendants have misused and infringed Plaintiff's

1 Passion Rx® mark and Plaintiff's name, and engaged in an unfair, unlawful deceptive, and  
2 an illegal course of conduct with the intent to profit from the unauthorized use of Plaintiff's  
3 mark and Plaintiff's name.

4 55. Defendants' acts and threats will continue and will cause irreparable injury  
5 to Plaintiff unless enjoined by this Court

6       56. As the direct and proximate result of the above-described acts by  
7 Defendants, Plaintiff has suffered injuries entitling him to recover damages as may be  
8 determined by the jury.

9       57. Defendants acted with oppression, fraud, and malice in its infringing, and  
10 Plaintiff is entitled to punitive damages..

## COUNT VI

## **Misappropriation of Name and Likeness for a Commercial Purpose,**

**California Civil Code §3344**

14        58. All of those allegations set forth hereinabove in paragraphs 1 through 57 are  
15 incorporated herein by reference as if fully set forth.

16 59. Defendants knowingly used, and continue to use, Plaintiff's name and the  
17 Passion Rx® mark for purposes of soliciting purchases, advertising and selling their  
18 products, merchandise, and goods without the prior consent of Plaintiff or his agents.

19 60. As a direct and proximate result of Defendants' knowing and unauthorized  
20 use of Plaintiff's name, Plaintiff has been damaged in an amount to be proved at trial.

21       61. As a further direct and proximate result of Defendants' knowing, willful,  
22 and conscious disregard for the rights of Plaintiff, Defendants are guilty of oppression,  
23 fraud, and malice, entitling Plaintiff to an award of punitive damages.

24       62. Plaintiff is informed and believes, and bases thereon alleges, that  
25 Defendants have continued to manufacture, offer for sale and sell, advertise, market, and  
26 distribute Defendants' products on Defendants' webpages. Unless and until enjoined and  
27 restrained by order of this Court, Plaintiff will continue to suffer great and irreparable  
28 injury in that his name and the Passion Rx® mark are being falsely associated with

1 Defendants' webpages and Defendant's products. Plaintiff has no adequate remedy at law  
2 for such injury.

3 **COUNT VIII**

4 **Common Law Misappropriation of Name or likeness**

5 63. Plaintiff repeats and realleges the allegations in paragraphs 1 through 62,  
6 inclusive, as though set forth fully herein.

7 64. Defendants have violated Plaintiff's exclusive right by knowingly and  
8 intentionally using Plaintiff's name and the Passion Rx® mark, without his prior consent,  
9 for commercial purpose, gain and profit in connection with manufacturing, offering for  
10 sale, and selling, advertising, marketing, and distributing Defendants' products on  
11 Defendants' webpages.

12 65. The use of Plaintiff's name and the Passion Rx® mark by Defendants in  
13 connection with the manufacturing, offering for sale, and selling, advertising, marketing,  
14 and distributing Defendants' products on Defendants' webpages has directly resulted in  
15 substantial and ongoing harm and injury to Plaintiff, in that, among other things, his name  
16 and the Passion Rx® mark are being falsely associated with Defendants' products and  
17 Defendants' webpages.

18 66. As a direct and proximate result of the conduct of Defendants, Plaintiff is  
19 entitled to the recovery of general and compensatory damages related to Defendants'  
20 manufacturing, offering for sale, and selling, advertising, marketing, and distributing  
21 Defendants' products on Defendants' webpages, the precise amount of which shall be  
22 established by Plaintiff at trial, according to proof.

23 67. As a further direct and proximate result of Defendants' knowing, willful,  
24 and conscious disregard for the rights of Plaintiff, Defendants are guilty of oppression,  
25 fraud, and malice, entitling Plaintiff to an award of punitive damages.

26 68. Plaintiff is informed and believes, and bases thereon alleges, that  
27 Defendants have continued to manufacture, offer for sale and sell, advertise, market, and  
28 distribute Defendants' products on Defendants' webpages. Unless and until enjoined and

1 restrained by order of this Court, Plaintiff will continue to suffer great and irreparable  
2 injury in that his name and the Passion Rx® mark are being falsely associated with  
3 Defendants' webpages and Defendant's products. Plaintiff has no adequate remedy at law  
4 for such injury.

5 **COUNT IX**

6 **California Anti-Dilution Act, California Business and Professions Code §14330**

7 69. Plaintiff repeats and realleges each and every allegation of paragraphs 1  
8 through 68 as if fully set forth herein.

9 70. The foregoing acts of Defendants are likely to injure Plaintiff's business  
10 reputation, impair the effectiveness of Plaintiff's Passion Rx® mark, and dilute the  
11 distinctive quality of the Passion Rx®. The foregoing acts of Defendants constitute an  
12 unlawful and intentional dilution in violation of the California Anti-Dilution Act, Cal. Bus.  
13 & Prof. Code §14330.

14 71. Defendants' acts will continue and will cause irreparable injury to Plaintiff  
15 unless enjoined by this Court.

16 **COUNT X**

17 **Exceptional Case, 15 U.S.C. §1117(a)**

18 72. Plaintiff repeats and realleges each and every allegation of paragraphs 1  
19 through 71 as if fully set forth herein.

20 73. Defendants have committed acts and will continue to commit acts that make  
21 this case exceptional under 15 U.S.C. §1117(a). In particular, Defendants' willfully  
22 infringing acts make this an exceptional case, meriting the full amount of damages  
23 available under the law.

24 **COUNT XI**

25 **Libel, Cal. Civ. Code §45**

26 74. Plaintiff repeats and realleges each and every allegation of paragraphs 1  
27 through 73 as if fully set forth herein.

28 75. Defendants' websites publish false and unprivileged written statements of

1 fact pertaining to Plaintiff's education, business, products, and profession on the world  
2 wide web.

3       76. These statements expose the Plaintiff to hatred, contempt, ridicule, and  
4 disgrace, and cause Plaintiff to be shunned or avoided in his community and professional  
5 associations, and tend to injure Plaintiff in his occupation. The statements are defamatory  
6 on their face, i.e., they are libel per se.

7       77. Defendants' statements appear to be made with the intent to harm Plaintiff's  
8 business and occupation, and to increase their own business profits. As such, said  
9 statements were made with actual malice.

10       78. The statements published on Defendants' websites are libelous per se, and  
11 the court may presume that general damages exist, and the Plaintiff need not show any  
12 special damage.

## COUNT XII

### Trade Libel

15       79. Plaintiff repeats and realleges each and every allegation of paragraphs 1  
16 through 78 as if fully set forth herein.

17       80. Defendants' websites publish false and unprivileged written statements of  
18 fact pertaining to Plaintiff's education, business, products, and profession on the world  
19 wide web.

81. The statements disparage the quality of Plaintiff's property, products,  
business goods, and literature, and express that Plaintiff manufactures inferior goods.

22        82. The statements play a material and substantial part in inducing others not to  
23 deal with the Plaintiff.

24       83. Defendants' statements appear to be made with the intent to harm Plaintiff's  
25 business and occupation, and to increase their own business profits. As such, said  
26 statements were made with actual malice.

27       84. Plaintiff can will be able to show that prospective customers were deterred  
28 from buying goods from Plaintiff, and that Plaintiff experienced a loss of prospective

1 contacts with customers.

2 **COUNT XIII**

3 **False Advertising Under Business & Professions Code §17500**

4 85. All of those allegations set forth hereinabove in paragraphs 1 through 84 are  
 5 incorporated herein by reference as if fully set forth.

6 86. The actions of Defendants, as set forth hereinabove in the promoting,  
 7 advertising, distributing, and selling of its products on cross-linked websites, amount to  
 8 false advertising under California Business and Professions Code §17500 *et seq.*

9 87. The use of disparaging statements about Plaintiff's products and  
 10 qualifications, as well as weekly company-created "Reader's Poll Choice" surveys, and  
 11 "Customer Testimonial Award" surveys found on Defendants' cross-linked websites,  
 12 which permanently promote their Orexis Product over all others, are false and misleading,  
 13 and members of the public are likely to be deceived.

14 88. Defendants knew or should have known that they were disseminating  
 15 misleading advertising, as it is plaintiff's contention, upon information and belief, that the  
 16 company principles/managers authorized or directed the creation of the civil conspiracy  
 17 described above in an effort to increase their profits.

18 89. Plaintiff has standing to sue under this statue and may file a complaint on  
 19 behalf of himself, and the general public.

20 **DAMAGES AND REMEDIES**

21 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of  
 22 them, jointly and severally, as follows:

23 **On All Counts.**

24 1. That Defendants be ordered to account and pay to Plaintiff all profits related  
 25 to Defendants' webpages, and Defendants' products, as permitted by 15 U.S.C. §1117(a)  
 26 and California Civil Code §3344, including pre- and post-judgment interest thereon at the  
 27 maximum rate permitted by law;

1       2.     For Plaintiff's general and compensatory damages, the precise amount of  
2 which shall be established at trial, according to proof;

3       3.     For three times the amount of Plaintiff's actual damages, as permitted by 15  
4 U.S.C. §1117(a);

5       4.     For an award of attorneys' fees pursuant to 15 U.S.C. § 1117(a), as this is an  
6 exceptional case, in that Defendants' conduct is malicious, fraudulent, intentional and  
7 willful;

8       5.     For attorneys' fees as permitted by California Civil Code §3344;

9       6.     For punitive damages, the precise amount of which shall be established at  
10 trial, according to proof, as permitted by California Civil Code §3344;

11       7.     That, pursuant to 15 U.S.C. §1114, California Business and Professions  
12 Code sections 17200, *et seq.*, and 17500, *et seq.*, and the common law, Defendants,  
13 including their agents, servants, employees, officers, attorneys, successors, licensees,  
14 partners, and assigns, and all persons acting in concert or participation with each or any of  
15 them, temporarily and permanently be enjoined and cease from (i) directly or indirectly  
16 infringing, or causing, enabling, facilitating, encouraging, promoting and inducing or  
17 participating in the infringement of any of Plaintiff's respective trademark or exclusive  
18 rights protected by the Lanham Act, whether now in existence or hereafter created; (ii)  
19 using Plaintiff's name in metatags and keyword advertising, (iii) using Plaintiff's  
20 trademarks, or any other mark or domain name substantially similar thereto, in metatags  
21 and keyword advertising, and (iv) selling any goods or services;

22       8.     Upon final hearing, that said injunction be made permanent;

23       9.     That, pursuant to §§17203, 17206, 17207, and 17500 of the California  
24 Business and Professions Code, Defendants receive a civil penalty not to exceed two  
25 thousand five hundred dollars (\$2,500.00) for each violation, for disgorgement of money  
26 that has been wrongfully obtained, and a total penalty of five thousand dollars \$5,000.00  
27 for each unlawful act;

28       10.    For general damages under Cal. Civ. Code §48a (4)(a), special damages

1 under Cal. Civ. Code §48a (4)(b), and punitive damages under Cal. Civ. Code §48a (4)(c),  
2 (d), and 3294.

3 11. For a declaration that Defendants' conduct willfully infringes Plaintiff's  
4 trademark both directly and secondarily;

5 12. For the costs of the action incurred herein; and

6 13. For such other and further relief as the Court deems just and proper.

7  
8 DATED: October 31, 2008

Respectfully submitted,

9 CRANDALL, WADE & LOWE  
10 A Professional Corporation

11 By

12   
JAMES A. ROSSI  
T. VINCENT CONSOLO  
13 Attorneys for plaintiff, RAY SAHELIAN

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